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**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

DONALD MORTON and DANIEL SANCHEZ,  
 on their own behalf and on behalf of a class of  
 similarly situated persons pursuant to F.R.C.P. 23  
 and 29 U.S.C. § 216, and on behalf of the General  
 Public,

Plaintiffs,

v.

VALLEY FARM TRANSPORT, INC., a  
 California Corporation,

Defendants.

Case No. C 06-02933 SI (ADR)

**[PROPOSED] NOTICE OF  
 PROPOSED SETTLEMENT AND  
 HEARING**

Hearing Date:	May 30, 2008
Hearing Time:	9:00 a.m.
Courtroom:	10, 19th Floor
Judge:	Hon. Susan Illston
Complaint Filed:	May 1, 2006

**IMPORTANT LEGAL NOTICE  
PLEASE READ THIS NOTICE CAREFULLY**

**Your rights may be affected by a lawsuit that is pending in the United States District Court for the Northern District of California. NOTE: In order to either participate in or be excluded from the lawsuit you must take affirmative action. You must file a Proof of Claim Form to participate in future proceedings or an Exclusion Form to opt out of further proceedings.**

1. YOU ARE HEREBY NOTIFIED that a proposed settlement ("Settlement") of the above-captioned class action ("Action") filed in the United States District Court for the Northern District of California has been reached by the Parties and has been granted preliminary approval by the Court supervising the Action. The purpose of this Notice is to describe the Action, to inform you of the terms of the proposed Settlement, and to inform you of your rights and options in connection with the proposed Settlement. The proposed Settlement will resolve all claims in the above-captioned federal court case. A Settlement Hearing will be held on July 25, 2008, to determine whether the Action should be granted final approval.

**Because your rights may be affected, it is extremely important that you read this Notice carefully. You must file a claim which is postmarked by December 1, 2008, if mailed, or which is received by December 5, 2008, if delivered by means other than mail, to participate in the Settlement. If you fail to file a timely claim, you will receive nothing under the Settlement and your claim will be barred.**

**WHY SHOULD I READ THIS NOTICE?**

2. If you received this Notice, it is because it is believed that you were employed as a truck driver by Valley Farm Transport, Inc. and that you were not provided with an opportunity to take meal and/or rest breaks, and/or that you worked more than forty (40) hours per week without being paid overtime compensation. If that is correct, then the information contained in this Notice affects your legal rights. You should read this Notice because you may be entitled to compensation under this Settlement.

**WHAT IS A CLASS ACTION?**

3. A class action is a lawsuit in which the claims and rights of many people are decided in a single court proceeding. One or more representative plaintiffs, also known as "class representatives," assert claims on behalf of the entire class. This avoids the necessity for a large number of individual lawsuits and enables the court to resolve similar claims efficiently. In a class action, the court supervises the prosecution of class claims by class counsel to insure fairness.

**PURPOSE OF THIS NOTICE**

4. The United States District Court for the Northern District of California has ordered that this Notice be sent to you because you may be a Class Member. The purpose of this Notice is to inform you of the proposed Settlement of this class action and your potential rights in regard to it.

**SUMMARY OF LITIGATION**

5. On May 1, 2006, a lawsuit was filed in the United States District Court for the Northern District of California by Donald Morton and Daniel Sanchez on behalf of themselves and similarly situated former employees of Valley Farm Transport, Inc. The lawsuit is titled D. Morton and D. Sanchez, et al. v. Valley Farm Transport, Inc. It is Plaintiffs' position that Defendant has had a consistent policy of, (1) not providing its truck drivers with the opportunity to take meal or rest periods, (2) not paying its truck drivers all earned wages at discharge, layoff and/or resignation,

(3) not paying its truck drivers all earned wages two (2) times per month, (4) not providing its truck drivers with itemized wage statements, and (5) requiring its truck drivers to work in excess of forty (40) hours per week hauling products solely within the State of California without paying them overtime compensation as required by Federal law. As a result, the Named Plaintiffs contend that they and other members of the Settlement Class have been unlawfully denied wages and otherwise harmed. Defendant denies that it has any liability to the Named Plaintiffs or any other Class Member.

6. On April 13, 2007, the United States District Court for the Northern District of California certified a Class consisting of all persons who were employed as truck drivers by Valley Farm Transport, Inc. and were not provided with the opportunity to take meal and/or rest breaks during the Class Period, and/or worked more than forty (40) hours per week during the Class Period without being paid overtime compensation.

7. On April 13, 2007, the Court appointed the following attorney to represent the Settlement Class ("Class Counsel") in this Action:

**Robert Bonsall, Esq.  
Jason Rabinowitz, Esq.  
Beeson, Tayer & Bodine, APC  
520 Capitol Mall, Suite 300  
Sacramento, CA 95814  
Tel: (916) 325-2100  
Fax: (916) 325.2120**

### **YOUR OPTIONS**

8. If you are a Class Member – that is, if you were employed as a truck driver for Valley Farm Transport, Inc. and were not provided with the opportunity to take meal and/or rest breaks during the Class Period, and/or worked more than forty (40) hours per week during the Class Period without being paid overtime compensation – you have several options. Before deciding what action, if any, you wish to take with respect to the proposed Settlement, you should read this Notice carefully.

9. If you want to participate in the Settlement, you must sign and date the attached Claim Form and either (1) mail the completed Claim Form by postage pre-paid U.S. first class mail postmarked *by no later than* December 1, 2008 to the Claims Administrator at the following address, or (2) if delivered by any other means other than postage pre-paid U.S. first class mail, deliver the Claim Form so that the Settlement Administrator actually receives it *no later than* December 5, 2008, at the following address:

**Claims Administrator – Morton and Sanchez, et al. v. Valley Farm Transport, Inc.  
Beeson, Tayer & Bodine, APC  
1404 Franklin Street, 5th Floor  
Oakland, CA 94612-3208  
(510) 267-6327**

10. If you need an extra copy of the Claim Form, please contact the Claims Administrator. If any information provided on the Claim Form is incorrect, please make corrections. (For example, if your address is incorrect, please provide the correct information.) Also, please provide your telephone number along with your Social Security Number and any other indicated information referred to on your Claim Form if it is not provided. If you wish to have confirmation that your Claim Form has been received by the Claims Administrator, you may do so by sending it by certified U.S. Mail with a return-receipt request.

11. If you are a Class Member and you choose to participate in the Settlement, you will be bound by all of the provisions of the Settlement Agreement between the Parties, including a full release of claims that will prevent you from separately suing Valley Farm Transport, Inc., its employees or any other related persons or entities for the matters being settled in this case (see paragraph 26, below). **ANY CLASS MEMBER WHO DOES NOT SUBMIT A TIMELY CLAIM FORM WILL NOT RECEIVE A SHARE OF THE SETTLEMENT AMOUNT.**

12. If you do nothing, you will not be entitled to a share of the Settlement Amount. **HOWEVER, YOU WILL BE BOUND BY THE TERMS OF THE SETTLEMENT, INCLUDING THE RELEASE, EVEN THOUGH YOU DID NOT RECEIVE ANY MONEY.** Therefore, you will not have the right to pursue your own claims against Valley Farm Transport, Inc. and/or other related entities or persons if you do nothing.

13. You may opt out of the Settlement by mailing the Exclusion Form to the Claims Administrator at the address listed in paragraph 9 on or before December 5, 2008. Such written request for exclusion must contain your name, address, telephone number, Social Security number, and the years of your employment by the Defendant. In order to be excluded from the settlement, you must return the Exclusion Form by mail to the Claims Administrator postmarked on or before December 1, 2008. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. If you choose to opt out, you will not be entitled to any recovery from the funds available for Settlement and you will not be bound by the Settlement Agreement or have any right to object, appeal or comment thereon. If you submit the Exclusion Form after the above specified date, you will be bound by all terms of the Stipulation Regarding Settlement (or "Settlement Agreement") and the Order and Final Judgment, regardless of whether you have requested exclusion from the Settlement.

14. You may object to the Settlement Agreement, personally or through an attorney, by mailing your objections **TO EACH OF THE FOLLOWING:**

**CLERK OF COURT**  
**United States District Court for the Northern District of California**  
**450 Golden Gate Avenue**  
**San Francisco, CA 94102**  
**Re: D. Morton and D. Sanchez, et al. v. Valley Farm Transport, Inc.**  
**Case No. C 06-02933 SI (ADR)**

**AND**

**JASON RABINOWITZ, ESQ.**  
**Beeson, Tayer & Bodine, APC**  
**1404 Franklin Street, 5th Floor**  
**Oakland, CA 94612-3208**

**AND**

**JEFFREY OWENSBY, ESQ.**  
**Rediger, McHugh & Hubbert LLP**  
**555 Capitol Mall, Suite 1240**  
**Sacramento, CA 95814**

15. No Class Member, however, shall be heard or entitled to object, and no papers or briefs submitted by any such person shall be received or considered by the Court, unless written notice of intention to appear at the Settlement Hearing together with copies of all papers and briefs proposed to be submitted to the Court at the Settlement Hearing, are mailed to each of the addressees in paragraph 14 above and received no later than July 7, 2008. All such objections must be signed and should contain your address, Social Security Number and the name of the case. If you submit an objection,

you may appear personally or through an attorney, at your own expense, at the Settlement Hearing to present your objection directly to the Court. Your objection should clearly explain why you object to the Settlement and must state whether you (or someone on your behalf) intend to appear at the Settlement Hearing. If you object to the Settlement, you will remain a member of the Class and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way and to the same extent as a Class Member who does not object. Any member of the Class who does not make and serve his or her written objections in the manner provided above shall be deemed to have waived such objections and shall be foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement. Any member of the Class who is satisfied with the proposed Settlement need not appear at the Settlement Hearing.

### **SUMMARY OF THE TERMS OF THE SETTLEMENT AGREEMENT**

16. Defendant and Plaintiff have agreed to an early resolution of these claims, without trial, in order to avoid the uncertainties, expense and time that would be required to litigate the claims of each potential Class Member. The Court has reviewed the proposed Settlement and given it preliminary approval, subject to the comments and/or objections of potential Class Members. The Court will hold a hearing on July 25, 2008, at 9:00 a.m. to determine whether to grant final approval of the Settlement. The description below is a summary of the terms of the Settlement. You may obtain more information about the proposed Settlement by contacting Jason Rabinowitz, Esq. at the address or telephone number listed in paragraph 34, below.

17. Settlement: The Parties have agreed that, to resolve this action, Defendant will pay One Million Three Hundred Thousand Dollars (\$1,300,000) to a Settlement Fund, payable in four (4) separate installments. The first installment of Two Hundred Seventy Five Thousand Dollars (\$275,000) shall be due within seven (7) days of final Court approval of the Settlement. The second installment of Three Hundred Twenty Five Thousand Dollars (\$325,000) shall be due on October 1, 2008, if the Court has approved the Settlement by then; if not, within seven (7) days of final approval. The third installment of Three Hundred Fifty Thousand Dollars (\$350,000) shall be due on October 1, 2009. The final installment of Three Hundred Fifty Thousand Dollars (\$350,000) shall be due on October 1, 2010.

18. Class Members: The potential Eligible Class Members consist of persons who were employed by Valley Farm Transport, Inc. as truck drivers during the Class Period. Subject to Court approval, Eligible Class Members shall receive a portion of the total Settlement Fund, less attorneys' fees and costs and Class Representative Enhancement payments, in proportion to his or her damages, as calculated by Class Counsel, less applicable deductions required by state and local law. In determining amounts owed each Class Member, Class Counsel shall calculate what percentage of the total Class damages each Class Member's individual damages represent. Each Class Member shall then receive that percentage of the Settlement Fund, less attorneys' fees and costs and Class Representative Enhancement payments, as their Settlement Award. For example, if a Class Member's damages represent 2% of the total Class damages, he or she will recover 2% of the Settlement Fund, after court-approved deductions for attorneys' fees and costs and Class Representative Enhancement payments. **According to Class Counsel's calculations of your damages and the formula described herein, if approved by the Court, you stand to receive a total gross amount of approximately \$\_\_\_\_\_ in four separate installments if you choose to take part in the Settlement and submit a Claim in a timely fashion.** Subject to the foregoing, settlement payments to Eligible Class Members shall be made in accordance with the agreed-upon timeline outlined in paragraph 17, above. **Thus, under this timeline, you stand to receive a gross amount of approximately \$\_\_\_\_\_ on or around August 1, 2008, \$\_\_\_\_\_ on or around October 1, 2008, \$\_\_\_\_\_ on or around October 1, 2009, and \$\_\_\_\_\_ on or around October 1, 2010.** Settlement amounts unclaimed by Eligible Class Members within six (6) months after the mailing of the Proof of Claim Forms shall revert back to Defendant.



19. Checks to Eligible Class Members: The Defendant shall issue payroll checks to each Eligible Class Member in gross amount, as directed by Class Counsel in accordance with the distribution scheme described in paragraph 17, above, and as ordered by the Court. The payroll checks issued by the Defendant to each Eligible Class Member shall include appropriate payroll deductions. The Defendant shall be responsible for the payroll taxes normally paid by the Employer.

20. Class Representative Enhancements: The Parties agree that the two (2) Named Plaintiffs, Donald Morton and Daniel Sanchez, shall each receive a sum of Seven Thousand Five Hundred Dollars (\$7,500), in addition to the sum they shall receive as Class Members, as described in paragraph 18, above, as compensation for their efforts on behalf of the Settlement Class and which have benefited the Settlement Class.

21. Attorneys' Fees for Class Counsel: Subject to Court approval, the Parties agree that Class Counsel shall recover a total sum of Three-Hundred Ninety Thousand Dollars (\$390,000) from the Settlement Fund, as attorneys' fees for prosecution of the Class Action. Subject to Court approval, Class Counsel shall receive attorneys' fees in the amount of thirty percent (30%) of each of the installments, described in paragraph 17, above. Class Counsel will file a Motion for Attorneys' Fees, Costs and Class Representative Enhancements with this court no later than June 13, 2008. A copy of Class Counsel's motion will be available through this court's website. Interested class members may also request a copy of the motion from Jason Rabinowitz, Esq. at the address or telephone number listed in paragraph 34, below.

22. Costs for Class Counsel: Subject to Court approval, the Parties agree that Class Counsel shall recover the costs incurred in litigating the Class Action. The costs incurred by Class Counsel shall be payable within seven (7) days of final Court approval of the Settlement.

23. Late Payments: The Parties agree that if Defendant fails to make payments in a timely manner, as outlined in paragraph 17, above, certain late fees shall be assessed as follows: If the Three Hundred Twenty Five Thousand Dollars (\$325,000) payment, due on October 1, 2008, is more than two (2) weeks late, interest on that payment shall be assessed in the amount of prime plus five percent (5%) until paid. If the Three Hundred Fifty Thousand Dollars (\$350,000) payment, due on October 1, 2009, is more than two (2) weeks late, the entire balance shall be accelerated.

24. Security: The Parties agree that Defendant's trailers shall be collateralized to secure the final payment of Three Hundred Fifty Thousand Dollars (\$350,000), due on October 1, 2010. Defendant represents that the trailers are valued at no less than the amount of the payment and are unencumbered. The collateral shall only be utilized to the extent necessary to satisfy the payment. A list of Defendant's trailers is attached hereto as **Attachment A**.

25. Administration of Settlement: The Parties agree that Class Counsel shall act as Claims Administrator of the Settlement and distribute the checks described in paragraph 19, above.

26. Release: Any Class Member not excluding himself or herself from the Class Settlement will be deemed to have released and discharged Valley Farm Transport, Inc. and each of its officers, directors, employees, shareholders, agents, representatives, successors, assigns, parents, subsidiaries, affiliated companies, and attorneys (collectively the "Released Parties"), from each of the Settled Claims. For the purpose of this release, "Settled Claims" means any and all claims and causes of action, known or unknown, arising out of or relating to, the events and/or omissions arising from Defendants' alleged failure, (1) to compensate its delivery drivers with overtime pay for work performed in excess of forty (40) hours per week, (2) to provide meal and rest periods, and (3) to pay all earned wages at the time of discharge, layoff or resignation. This release is not intended to affect any claim other than the Settled Claims that may exist between or among the Parties and does not release any claim which may arise as to the enforcement of this Settlement Agreement.

27. Conditions of the Settlement. This Settlement is conditioned upon the Court entering an Order at or following the Settlement Hearing approving the Settlement as fair, reasonable, adequate

and in the best interests of the Settlement Class.

### **HEARING ON PROPOSED SETTLEMENT**

28. **You are not required to attend the Hearing or file an objection, but you may do either or both.**

29. The Settlement Hearing on the adequacy, reasonableness and fairness of the Settlement Agreement will be held on July 25, 2008 at 9:00 a.m. before the Honorable Susan Illston of the United States District Court for the Northern District of California located at 450 Golden Gate Avenue in San Francisco, California. The Settlement Hearing may be continued without further notice.

30. You may object, personally or through an attorney, to the proposed Settlement by mailing your objection and following the procedures outlined in paragraphs 14 & 15, above.

31. Any Class Member who does not object in the manner provided above shall be deemed to have approved the Settlement and to have waived such objections and shall be forever foreclosed from making any objections (by appeal or otherwise) to the proposed Settlement.

### **CHANGE OF ADDRESS**

32. If you move after receiving this Notice, if it was misaddressed or if for any reason you want your payment or future correspondence concerning this Action and the Settlement to be sent to a different address, you should supply your current preferred address to the Settlement Administrator at the address set forth in paragraph 9.

### **REMINDER AS TO PARTICIPATION REQUIREMENTS**

33. If you wish to participate in the Settlement of this class action, you should be sure to fill out, complete and return a copy of the Claim Form to the Claims Administrator so that it is postmarked on or before December 1, 2008, or delivered in a manner that will ensure its receipt by the Claims Administrator by no later than December 5, 2008.

### **ADDITIONAL INFORMATION**

34. The foregoing is only a summary of the Action and the proposed Settlement and does not purport to be comprehensive. For a more detailed statement of the matters involved in the Action and the proposed Settlement, you may refer to the pleadings, the Joint Stipulation of Settlement, and other papers filed in the Action, which may be inspected at the Office of the Clerk of the United States District Court for the Northern District of California, located in San Francisco, California, during regular business hours of each court day.

All inquiries by Class Members regarding this Notice and/or the Settlement should be directed to counsel for the Settlement Class:

**Jason Rabinowitz, Esq.**  
**Beeson, Tayer & Bodine, APC**  
**1404 Franklin Street, 5th Floor**  
**Oakland, CA 94612-3208**  
**Tel: (510) 267-6327**  
**Fax: (510) 625-8275**

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, VALLEY FARM TRANSPORT, INC. OR THE ATTORNEYS OF VALLEY FARM TRANSPORT, INC. WITH INQUIRIES.**

1 **IT IS SO ORDERED.**

2 Dated: 6/5/08, 2008



HONORABLE SUSAN ILLSTON  
UNITED STATES DISTRICT JUDGE